REMARKS/ARGUMENTS

Claims 6, 7, 10, 12-16, 23, 25, 32 and 36-38 are now pending in the present application. Claims 6, 10, 23 and 32 have been amended, and Claims 1-4, 8, 9, 11, 17-21, 24, 26-31, 33-35 and 39 have been cancelled, herewith. Reconsideration of the pending claims is respectfully requested.

In addition, Applicants request entry of this amendment after final as placing this case in condition for allowance or better form for appeal. Specifically:

(i)   Claim 6 has merely been amended to be in independent form, to include all the features previously a part of Claim 1 (of which Claim 6 previously depended upon);

(ii)   Claim 10 has merely been amended to be in independent form, to include all the features previously a part of Claim 9 (of which Claim 10 previously depended upon);

(iii)   Claim 23 has merely been amended to be in independent form, to include all the features previously a part of Claim 18 (of which Claim 23 previously depended upon); and

(iv)   Claim 32 has merely been amended to be in independent form, to include all the features previously a part of Claim 31 (of which Claim 32 previously depended upon).

Accordingly, these Claims 6, 10, 23 and 32 are merely being amended as to form (to be in independent form), and are not being substantively amended, and therefore entry of this amendment after final would not prompt additional searching on the part of the Examiner. Accordingly, entry of this amendment after final is respectfully requested as placing this case in condition for allowance or better form for appeal.

I.   35 U.S.C. § 112, Second Paragraph

The Examiner rejected Claim 17 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

Applicants have cancelled such claim herewith, without prejudice or disclaimer, such that this case is now in condition for allowance or better form for appeal. Therefore, the rejection of Claim 17 under 35 U.S.C. § 112, second paragraph has been overcome.

II.   35 U.S.C. § 102, Anticipation

The Examiner rejected Claims 1-4, 8, 17, 27-30 and 39 under 35 U.S.C. § 102(e) as being anticipated by Lazaridis et al (U.S. Patent No. 6,401,113). This rejection is respectfully traversed.

Applicants have cancelled such claims herewith, without prejudice or disclaimer, such that this case is now in condition for allowance or better form for appeal.

Therefore, the rejection of Claims 1-4, 8, 17, 27-30 and 39 under 35 U.S.C. § 102(e) has been overcome.

III.   35 U.S.C. § 103, Obviousness

The Examiner rejected Claims 6, 7, 14-16, 25 and 36-38 under 35 U.S.C. § 103 as being unpatentable over Lazaridis et al (U.S. Patent No. 6,401,113) in view of Muir et al (U.S. Patent No. 6,088,515)[1]. This rejection is respectfully traversed.

With respect to Claim 6, it is urged that none of the cited references teach or suggest the claimed feature of "wherein the step of pushing the request comprises sending a textual based service load to a proxy server, wherein the textual based service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server". In rejecting Claim 6, the Examiner states that this feature is taught by the cited Muir reference at col. 3, lines 1-42, the Abstract, and Figure 1. Applicants urge that this passage describes that a network browser on a client node obtains a first/web page from a network server node and displays the web page to a user of the client node (col. 3, lines 13-16). When the user then selects an application program for execution, the network browser obtains a network configuration file that corresponds to the selected application from a network server (col. 3, lines 16-20). The network browser starts a client agent which will communicate with the selected application (col. 3, lines21-22). This application program remains at, and is executed on, the application execution server (col. 3, lines 32-42; Figure 1, element 36). These teachings are substantially different from the features recited in Claim 6, as will now be shown in detail.

First, this Muir cited passage describes that a user selects an application program to execute by selecting a hyperlink using a mouse or keyboard. In contrast, per the features of Claim 6, a request to backup data is *pushed* to the client device (where this pushing of the request comprising sending the service load to the proxy server), and this *pushed request includes sending a service load* containing the uniform resource locator (i.e., *pulling* of a command/request, per the teachings of the cited reference, versus *pushing* of the command/request, as claimed)[2].

Second, after the user has selected the hyperlink for a desired application per the teachings of Muir, the network browser obtains a configuration file that corresponds to the requested application (col. 3, lines 19-23). In contrast, the uniform resource locator for the *application itself* is provided in the

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[1] This rejection is a new ground of rejection made after the Examiner re-opened prosecution for claims under appeal, and this rejection was immediately made a final rejection even though such rejection was not the result of a claim amendment or IDS submission – which is therefore a premature final rejection as previously described in Section I above.

[2] It should be further noted that the cited Lazaridis reference only teaches the pushing of user data items, and not the pushing of commands/requests.

service load (i.e., identifier for *configuration file*, per the teachings of the cited reference, versus identifier for the *application itself*, as claimed).

Third, Muir teaches that the client-requested application remains in a fixed location on the application execution server. In contrast, Claim 6 recites that service load provides a uniform resource identifier for an application *that the wireless device may <u>retrieve</u> to transmit the data to the server* (i.e., *remote* execution of an application, per the teachings of the cited reference, versus *local* execution of an application, as claimed).

Thus, the combination of references used in rejecting Claim 6 do not teach (i) *pushing*, to the client device, *a request* to backup data, where pushing this request includes (ii) sending a service load that provides a uniform resource *identifier for an application*, or (iii) that the application is an application that the wireless device may *retrieve* in order to transmit data to the server. Accordingly, a prima facie case of obviousness has not been established with respect to Claim 6 as all of the claim limitations are not taught or suggested by the cited references, and thus Claim 6 has been erroneously rejected[3].

These missing claimed features advantageously provide for an automated technique for backing up data from a wireless device that may be resource constrained, and thus cannot provide a typical web browsing model (Specification page 11, line 9 – page 12, line 15). The teachings of Muir do in fact provide such traditional web browsing model (Muir col. 3, lines 13-53), and thus a person of ordinary skill in the art, when confronted with the teachings of Muir, would not have been motivated to modify such teachings in accordance with the features recited in amended Claim 1 (pushing backup request to wireless device; providing an identifier to an application that may be retrieved by and executed on a wireless device). Thus, it is further urged that Claim 6 is not obvious in view of the cited references.

Applicants initially traverse the rejection of Claim 7 for reasons given above with respect to Claim 6 (of which Claim 7 depends upon).

Further with respect to Claim 7, and contrary to the Examiner's assertion, the cited Muir reference does not teach or suggest the claimed features of "sending a request by the wireless device to the proxy server to retrieve the application identified by the uniform resource identifier; receiving the application by the wireless device; and executing the application by the wireless device to transfer the data requested to be backed up". As can be seen, the application which is identified by the uniform resource locator (provided in the service load that is sent as a part of pushing the request to backup data)

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[3] To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974). If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

is received by the wireless device, and executed by the wireless device. The cited Muir reference states that a configuration file (which is not an application to be executed) is read by the client device (per Claim 7, the application *itself* is received by the wireless device). The routines that are described as being executed by the wireless device itself per the teachings of the cited Muir reference are (i) a network browser, and (ii) a client agent (Muir, col. 3, lines 13-53). Quite simply, Muir's user selected application is not received and executed by the client. Thus, it is further urged that Claim 7 is not obvious in view of the cited references.

With respect to Claim 14 (and similarly for Claims 15, 16, 25 and 36-38), such claim recites "responsive to receipt of a command from a backup server via a wireless network to backup data, retrieving, without user intervention, the data to be backed up from storage within a wireless client". As can be seen, data to be backed up from storage within the wireless client is retrieved without user intervention in response to *receipt of a command from a backup server to backup data*. In rejecting this aspect of Claim 14, the Examiner cites Lazaridis teaching at col. 7, lines 24-34 as teaching such claimed feature. Applicants urge that none of these user-defined event triggers are described as being commands from a backup server to which the data to be backed up from the wireless client is transmitted to. Rather, the described events are a command message *from* the mobile device, a command message *from some other external computer*, sensing user proximity to a host system, or any other event that is *external to the host system*. Various internal events such as screen saver activation, keyboard timeout, and programmable timer are also described as possible trigger events. There is no teaching of any type of receiving of a *command* to backup data from a backup server, and in fact the entire premise of the Lazaradis' teachings is to eliminate any such requirement for such a command, and instead continuously pushes data in response to an event trigger (col. 1, lines 31-39). Thus, since there is no such backup command from a backup server, it necessarily follows that there is no command that comprises a location of an application to be downloaded to and executed by a wireless client, as required by the features of Claim 14. In addition, as there is no backup command by a backup server, there would have been no motivation to modify the teachings of Lazaridis to include such a back command, as Lazaridis expressly teaches eliminating any requirement for such a backup command. It is thus urged that Claim 14 (and similarly for Claims 15, 16, 25 and 36-38) is not obvious in view of the cited references.

Therefore, the rejection of Claims 6, 7, 14-16, 25 and 36-38 under 35 U.S.C. § 103 has been overcome.

IV.   35 U.S.C. § 103, Obviousness

The Examiner rejected Claims 9, 11, 18, 19-21, 24, 26, 31 and 33-35 under 35 U.S.C. § 103 as being unpatentable over Lazaridis et al (U.S. Patent No. 6,401,113) in view of Zarom (U.S. Patent No. 6,356,529). This rejection is respectfully traversed.

Applicants have cancelled such claims herewith, without prejudice or disclaimer, such that this case is now in condition for allowance or better form for appeal.

Therefore, the rejection of Claims 9, 11, 18, 19-21, 24, 26, 31 and 33-35 under 35 U.S.C. § 103 has been overcome.

V.   35 U.S.C. § 103, Obviousness

The Examiner rejected Claims 10, 12, 13, 23 and 32 under 35 U.S.C. § 103 as being unpatentable over Lazaridis et al (U.S. Patent No. 6,401,113) in view of Zarom (U.S. Patent No. 6,356,529) in further view of Muir et al (U.S. Patent No. 6,088,515). This rejection is respectfully traversed.

With respect to Claim 10, it is urged that none of the cited references teach or suggest the claimed feature of "wherein the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server". In rejecting these features of Claim 10, the Examiner states that such features are taught by the cited Muir reference at the same Muir passage cited in rejecting Claim 6. For similar reasons to those given above in the traversal of the Claim 6 rejection, Muir does not teach/suggest a proxy server that (i) receives a *request from a backup server* for a wireless device to backup data where this request (ii) is a service load that provides the wireless device with *a uniform resource identifier for an application*, or (iii) that the application performs *all three* functions of identifying, locating and transmitting the requested data to the backup server. Rather, the user manually selects an application to be executed on a different node (an application execution server), and once the application is executing on the application execution server, the client agent (and not the application) is responsible for receiving data from the user (through the mouse or keyboard) and transmitting it to the application program (Muir col. 3, lines 35-42). The 'application' (as identified by a uniform resource identifier provided in a received service load) does *not* 'identify, locate, and transmit' requested data to the backup server, as per the features of original Claim 10. It is thus urged that Claim 10 is not obvious in view of the cited references.

Applicants traverse the rejection of Claims 12 and 13 for reasons given above with respect to Claim 10 (of which Claims 12 and 13 depend upon).

Applicants traverse the rejection of Claims 23 and 32 for similar reasons given above with respect to Claim 10.

Therefore, the rejection of Claims 10, 12, 13, 23 and 32 under 35 under 35 U.S.C. § 103 has been overcome.

VI. <u>Conclusion</u>

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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